

UNITED STATES COURT OF FEDERAL CLAIMS

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U.S. COURT OF
FEDERAL CLAIMS

NEW BREED LEASING
CORPORATION,

Plaintiff,

v.

UNITED STATES,

Defendant.

Docket No.: 03-115C

Pages: 1 through 30

Place: Washington, D.C.

Date: March 31, 2003

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ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

NEW BREED LEASING)	
CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No.: 03-115C
)	
UNITED STATES,)	
)	
Defendant.)	

Courtroom 5
National Courts Building
717 Madison Place, N.W.
Washington, D.C.

Monday,
March 31, 2003

The parties met, pursuant to notice of the
Court, at 1:35 p.m.

BEFORE: HONORABLE LAWRENCE M. BASKIR
Judge

APPEARANCES:

For the Plaintiff:

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P R O C E E D I N G S

(1:35 p.m.)

THE CLERK: All rise. The United States Court of Federal Claims is now in session, the Honorable Judge Lawrence M. Baskir presiding.

New Breed Leasing Corporation v. The United States, Case No. 03-115C, comes before the Court today on the parties' cross motions for summary judgment.

THE COURT: Good afternoon. Please be seated.

ALL: Good afternoon, Your Honor.

THE COURT: I think I need to ask you all, please, to identify yourselves, although I think I recognize a few faces.

MR. DAVIS: Your Honor, on behalf of Plaintiff, New Breed Leasing Corporation, I am Philip Davis with the firm of Wiley, Rein & Fielding. To my left is Dan Graham of our firm, to his left is Tim Staley of our firm, and to his left is Phil Harrington of our firm, Your Honor.

MR. WILLIAMSON: Your Honor, John Williamson from the U.S. Department of Justice on behalf of Defendant, United States of America. To my right is Ms. Laurie Dym. She is counsel, Commercial & Appellate Litigation, for the United States Postal

1 Service.

2 MR. GORDON: I am Mike Gordon representing
3 APL Logistics, the Intervenor.

4 THE COURT: Okay. I want to thank you again
5 for the very fine written and oral advocacy that you
6 all have put into this case. It is very, very
7 helpful, and it is always a pleasure to read and to
8 hear good advocacy like that, so thank you all very,
9 very much for that.

10 ALL: Thank you, Your Honor.

11 THE COURT: I believe when we started our
12 scheduling a couple months back again we had targeted
13 April 1 as the date by which a decision should be made
14 in this case. You all came to an arrangement for the
15 interim, and, having heard no complaints, I gather it
16 has worked out pretty well, and I am pleased that you
17 could come up with that.

18 I want to keep my own part of the bargain
19 and render a decision today in the case. It is a fact
20 driven case, and so I'm not sure there's anything in
21 here of lasting import in the formation of bid protest
22 law that would require an extended written opinion
23 taking an extended amount of time.

24 That having been said, let me start with the
25 end. I am going to grant the government's motion for

1 summary judgment and deny the Plaintiff's. I don't
2 believe Plaintiff has made the case for this bid
3 protest, and I'll go into that in a little more
4 detail.

5 First as I guess some initial matters, let
6 me say that I believe that the award date is
7 January 3, as the Plaintiff and as the Intervenor have
8 contended, as opposed to the government. It is quite
9 clear that as of January 3 the competition was over,
10 APL was selected, other offerors were not selected,
11 and that concluded that process.

12 It was possible, of course, and I guess it
13 is always possible, that the awardee may fail to
14 follow through on its contract obligations, but that's
15 a different matter, and that's not a bid protest
16 matter. The consequence of that, of course, is that
17 some of the issues that New Breed raised as, for
18 example, the question of the facility lease, become
19 not the subject of a bid protest, but of a contract
20 administration question between the government or the
21 Postal Service, I guess, and APL and not involving
22 other offerors.

23 On a second matter that has to do with an
24 argument that New Breed appeared to be making during
25 the course of oral argument, and that had to do with

1 the adequacy of documentation of the analysis and the
2 review of the various proposals, I think, first of
3 all, it's too late to raise that issue as an
4 independent issue if indeed that was New Breed's
5 contention at oral argument. It was not in the papers
6 and should have been if it was to be raised.

7 Secondly, I'm not sure that the record
8 actually supports such a charge. It seems to me that
9 there are notations and reflections of discussions on
10 a whole range of issues and various forms, e-mails and
11 others, which pretty well document many of the issues
12 we've talked about, if not all of those issues, so on
13 that ground I think it would fail.

14 I also think it would fail because I'm not
15 sure that procurement law requires a level of
16 specificity of documentation down to the kinds of
17 technical matters and precise matters that we were
18 talking about when this was discussed last week. I
19 think I address this in the Cubic decision, and I
20 think it would come out the same way in this case.

21 That has to do, I guess, with the overall
22 questions. Let me now start with what or continue
23 with what I would have thought in the past was the
24 last issue, and that is prejudice, but now I think
25 under the Court of Appeals rules it's the first issue.

1 It was not contested by the government. I don't think
2 there is any question that were a procurement
3 violation to be found here, New Breed would be
4 prejudiced.

5 The high quality of New Breed's proposal and
6 the narrowness of the price distinction between the
7 two offerors makes it clear that New Breed would have
8 standing or would have been prejudiced or would
9 satisfy the prejudice standard, so I say that I guess
10 as an initial matter. As I say, I would have thought
11 it would have been the last matter.

12 Now let me get to the particulars of New
13 Breed's case. There were three areas of non-
14 compliance that New Breed raised. I'm going to deal
15 with them each in turn. The first one has to do with
16 a letter of intent for the facility. I do not
17 understand the RFP's requirement to be as strict as
18 New Breed presented, and that is to say that it
19 presents a legal document evidencing control over the
20 prospective facility.

21 I think the letter of intent serves a
22 different kind of purpose. As I read it, it required
23 an offeror to identify a particular location with
24 enough specificity so that that was not something
25 which would then have to be undertaken from scratch

1 after the award.

2 I think that that letter of intent had to
3 have some basic kinds of information about what a
4 prospective lease might be, and it had to be endorsed
5 by the potential lessor and the offeror. I think APL
6 satisfied the essentials of that letter of intent, so
7 I don't believe that any omissions like the expiration
8 date went to the core of what the letter of intent was
9 supposed to serve, and I certainly don't think it
10 needed to be a legally binding document.

11 There was no real presentation in the papers
12 that explained the letter of intent in those terms,
13 and I don't understand the letter of intent to be
14 exactly that. There couldn't be a legally binding
15 agreement between an offeror like APL and a landlord
16 like Sony, for example, when APL never knew it was
17 going to actually have to have that facility or not,
18 so I think it was just a preliminary kind of document
19 with preliminary assurances.

20 Certainly it was sufficient so that the
21 Postal Service could visit the facility, examine it
22 and satisfy itself that it was sufficient for the
23 various departments that facility had to have, and
24 there was, of course, a site visit and some things,
25 especially parking, which we'll get into in a moment.

1 Some things were gone into in great detail by that
2 site visit, so I think the letter of intent satisfied
3 the purposes of the RFP.

4 Let me move on to the parking. The parking
5 proposal that APL presented was sufficient so that the
6 various consulting experts that the Postal Service had
7 employed could review APL's plan, could review them
8 against the site location itself, together with an
9 unfortunate ball park, and satisfy itself that indeed
10 the requirements of the RFP with respect to trailer
11 parking could be satisfied with this particular
12 location.

13 I think that the plans that APL submitted
14 plus the discussions apparently were sufficient for
15 this purpose. I didn't understand the 1988 site plan
16 to be the absolute norm against which all offerors or
17 any offeror would be measured, and I note that there
18 were some issues raised with respect to APL being able
19 to satisfy the site plan, but apparently they were
20 resolved to satisfaction.

21 Some issues were raised with respect to New
22 Breed itself and its ability under that. I have no
23 doubt that New Breed could have satisfied it. I don't
24 remember seeing any indication in the record that New
25 Breed had failed the trailer parking in any degree

1 greater than the questions that were raised with
2 respect to APL, so I think that the trailer parking
3 was satisfied.

4 Now, there was a problem with respect to the
5 APL site not as to whether or not it could comply, but
6 whether or not it could comply in a timely manner
7 considering the fact that the seven month time period
8 between the original award date and the start date of
9 May 24 had been reduced to five months. That was
10 recognized, that was discussed, and APL came up with a
11 contingency plan for a temporary parking facility to
12 the extent that the ultimate one couldn't be done in
13 time.

14 I don't see any reason why -- let me start
15 again. That would seem perfectly satisfactory to
16 everybody. It was not a foregone conclusion, and I
17 guess it still is not a foregone conclusion, that APL
18 could not meet the parking requirements by May 24, but
19 it had a provision in the event that there was a
20 period of time that it could not meet it.

21 I don't think that that contingency plan was
22 at all defective. I don't think a letter of intent
23 was necessary. That's not what I understood the
24 off-site letter of intent to require, and so I find
25 that that was perfectly satisfactory.

1 I guess the third area had to do with APL's
2 implementation plan. Besides the trailer parking
3 question, which was identified and resolved to the
4 satisfaction, I think properly, of the Postal Service,
5 there was some questions raised I guess about
6 machinery delivery dates. As I understand the record,
7 APL satisfied that by assuring the Postal Service that
8 it had contacted suppliers, that they all could supply
9 the required items in time and that the largest lead
10 time for any kind of machinery was 12 months or 12
11 weeks rather, and that's certainly well within the
12 time period.

13 I was not persuaded that there were any
14 issues with respect to the implementation plan at the
15 submission date that raised any issues that would have
16 foreclosed APL from have satisfied the requirements to
17 submit a proper implementation plan. Those are I
18 think what I would term the three non-compliance
19 issues that were raised here.

20 Let me get now to I guess the comprehensive
21 charge of a failure to consider risk. That took I
22 think a number of forms, but I think it was clearly
23 satisfied by the Postal Service. When the original
24 proposals were submitted, deficiencies were noted with
25 respect to a variety of items in APL and in other

1 offerors' proposals. Those were discussed with APL.
2 They were resolved to the satisfaction.

3 The parking was a deficiency or potential
4 deficiency. That was addressed. The timeliness of
5 the parking, the trailer parking, was raised. That
6 was addressed. The potential problem of getting
7 machinery deliveries was identified as a problem, and
8 that was addressed, and a variety of other things were
9 addressed in terms of risk or, if you will,
10 deficiency, and they were addressed either to the
11 satisfaction of the Postal Service or at least
12 minimized.

13 A potential deficiency with respect to the
14 sorting scheme that APL proposed was nominated as a
15 deficiency or potential deficiency. That was
16 discussed, and apparently that was also resolved, so I
17 don't think it is accurate to say that risk was not
18 identified. Risk was certainly identified, certainly
19 addressed.

20 That is not to say that APL's plan doesn't
21 have some inherent risk in the translation of a
22 proposal to an actual operation, but that's I think
23 inherent in any proposal, certainly any proposal of a
24 challenger, as opposed to an incumbent, so I don't
25 think that the issue of risk was established,

1 certainly not to my satisfaction.

2 Now, there was I think a question raised
3 with respect to the lease cost and whether or not that
4 was underestimated on the part of APL. APL had
5 assigned a cost of approximately \$21 million or \$22
6 million over the course of this contract for lease
7 expenses, and there is a question as to whether or not
8 that figure more properly should have been \$26
9 million.

10 That has to do with the amount of space and
11 proper amount of lease costs that would be chargeable
12 to the Postal Service and was also framed by New Breed
13 as a potential performance risk. That certainly I
14 don't think would be that. The fact that a potential
15 cost or even an actual expense if you were to look at
16 the actual lease itself might be different from an
17 estimate shouldn't surprise anybody. I would really
18 think that if anything you can be confident about it
19 is that estimated costs never turned out to be what
20 the actual expense is. That's just the very nature of
21 estimates.

22 For a \$4 million discrepancy, if indeed it
23 is a discrepancy, allocated over a \$100 million
24 contract and nine years just does not, in my mind,
25 raise even the possibility that it would risk APL not

1 being able to complete this contract satisfactorily,
2 which was I think the core of what New Breed's point
3 was, so I don't consider that to be a risk at all or
4 -- well, no. I won't even say a de minimis risk. I
5 don't believe that that kind of discrepancy, if there
6 is a discrepancy, amounts to any kind of a possibility
7 of a performance risk.

8 Let me get next to the question of the
9 tradeoff. I don't understand the language in the RFP
10 with respect to tradeoff to involve what I understand
11 New Breed's point was, and that was an explicit
12 comparison of the proposal. I understand that
13 language to be a requirement that were the selection
14 to go to a higher priced offeror there had to be a
15 tradeoff with respect to quality. That is to say the
16 Postal Service had to be buying, if that's the proper
17 term; had to be buying higher quality with that extra
18 or higher cost, so that's what I understand the
19 quality of the cost technical merit provision to mean.

20 If it means, as New Breed suggests, an
21 explicit tradeoff between the proposals -- that is to
22 say a comparison between the proposals -- and I don't,
23 as I say, understand the terms to be that, but if
24 that's what it means I think the award recommendation
25 clearly does that in its discussion of the two

1 proposals independently to be sure and in its overview
2 of the potential suppliers. It does indeed compare
3 the cost of the two proposals and the respective
4 benefits that are found in the two proposals, so I
5 think that the cost tradeoff, no matter how you read
6 it, was certainly met by the Postal Service in its
7 award recommendation.

8 Let me get to the final matter, and that has
9 to do with transportation cost saving or, if you want
10 to make it a little bit more general, the cost savings
11 to the Postal Service of going with incumbency in New
12 Breed's incumbency. This issue I think was raised and
13 decided when the Postal Service, as it properly could,
14 decided to increase the radius from the bulk mail
15 center from 25 miles to 40 miles. By doing that, I
16 think they inherently increased the chances that
17 challengers could have a viable, competing offeror,
18 and I guess to that extent that decision was
19 disadvantageous to New Breed.

20 At that time, New Breed did propose that the
21 transportation costs, the arguably higher
22 transportation costs of being able to site the service
23 center 40 miles away from the bulk mail center, that
24 those arguably higher transportation costs which the
25 Postal Service had to bear should be factored in in

1 the selection process.

2 New Breed proposed that. The Postal Service
3 decided not to do that. To do that, assuming it could
4 be done, would clearly benefit New Breed because of
5 the proximity of its center to the bulk center or its
6 facility to the bulk mail center, and so the Postal
7 Service declined to do that.

8 If that was an issue or should have been an
9 issue in New Breed's eyes, it should have objected to
10 that failure to make it an explicit factor in the
11 selection process at that time. It did not, and I
12 think it waived the right to complain about it
13 thereafter.

14 If one, however, takes that issue on its
15 merit I think that it is a very questionable merit
16 indeed. The transportation costs are a factor not
17 only of the distance from the bulk mail center, but
18 also distance from various customers that would be the
19 source of the mail transport equipment that's going to
20 the service center.

21 To the extent that you were to locate the
22 service center further away from let's say some
23 suppliers or some sources of the equipment, you would
24 necessarily be making it closer to others, and it
25 would be totally speculative and I think more than

1 speculatively indeterminant as to whether or not the
2 location within this 40 mile radius ultimately ended
3 up costing more or less in terms of transportation
4 costs.

5 That's even viewing the sources as a static
6 universe of sources, but over the course of nine
7 years, it seems to me, it would change from year to
8 year, and you couldn't in any legitimate way calculate
9 what the transportation cost consequences would be
10 locating the service center, locating this service
11 center, anywhere within that 40 mile radius of the
12 bulk mail center.

13 I think that answers. The New Breed study
14 itself was deficient in any number of ways, but I
15 think inevitably no study could be adequate enough to
16 provide a reliable benchmark of savings that would be
17 applied to measure the cost or the work to the Postal
18 Service of any of these offerors, so I do not take the
19 transportation study and its last-minute surfacing
20 again as being a legitimate issue.

21 That I think covers the major points of New
22 Breed's case and the responses. Let me now turn I
23 guess to a wrap up, and that has to do with the
24 Protective Order. I notice that once again the
25 gallery is not filled with people who are curious to

1 find the secrets that New Breed and the Postal Service
2 and APL have invented in this case, so I don't think
3 that's a difficulty.

4 I also don't think that my oral recitation
5 of the reasons raises or makes explicit any of the
6 protected materials that you all have cited, so let me
7 ask first, Mr. Williamson, whether this transcript of
8 today's proceedings you think has any protected
9 material in it in my comments?

10 MR. WILLIAMSON: No, Your Honor, not so far
11 as the government is concerned.

12 THE COURT: Mr. Gordon?

13 MR. GORDON: That's not my impression from
14 listening to it.

15 THE COURT: Mr. Davis?

16 MR. DAVIS: I would agree with that, Your
17 Honor. I didn't detect any protected information.

18 THE COURT: All right. So we will not seal
19 today's proceeding.

20 I want to ask now. Maybe you've had a
21 chance to consider Thursday's oral argument, so let me
22 ask the same kind of questions with Mr. Williamson.
23 It may be a little bit more difficult to answer. Did
24 you identify in retrospect or at the time any
25 protected information raised by any of us?

1 MR. WILLIAMSON: Well, I guess two
2 questions, Your Honor.

3 As far as the government is concerned, I
4 think our position all along has been that the
5 government doesn't see any proprietary information in
6 any of the submissions that have been made, but
7 whether the government's position with respect to what
8 New Breed or APL may wish to be protected, I don't
9 think we would object if the commercial entities do
10 want to designate certain parts.

11 THE COURT: I understand. In other words,
12 so far as the Postal Service and the government is
13 concerned, there's no information pertinent to the
14 government that you would from your own position want
15 to protect?

16 MR. WILLIAMSON: That's correct, Your Honor.

17 THE COURT: Okay. Mr. Gordon, I wonder if
18 you had an opportunity to review?

19 MR. GORDON: I thought about Thursday a lot,
20 but I thought about everything that was said for
21 operational purposes. I think probably the parts that
22 we're most sensitive about would be the operational
23 aspects of the proposal.

24 I think those operational aspects will come
25 up again in future procurements. My understanding is

1 probably New Breed is doing what it does operationally
2 very similarly to what they do in New Jersey, and we
3 would be proposing something operationally that's
4 different, as you can tell --

5 THE COURT: Yes.

6 MR. GORDON: -- from the record, than what
7 they do, and that should not be public knowledge.

8 THE COURT: Well, do you think that the
9 discussion, and you're talking now about the sorting
10 which --

11 MR. GORDON: Yes. I think some of the
12 discussion might have gone into those areas because I
13 think Mr. Davis I think tried to express his view of
14 what our sortation method represented versus what
15 theirs represented.

16 THE COURT: Although I guess his description
17 of what you were doing wouldn't necessarily --

18 MR. GORDON: Well, I think --

19 THE COURT: Let me put it this way.

20 MR. GORDON: -- our competitors are going to
21 find out from the others.

22 THE COURT: Okay.

23 MR. GORDON: I think it would not be
24 difficult to excise those portions of the record that
25 would cover proprietary information.

1 THE COURT: All right. Let me speak I guess
2 more generically because the parties denoted
3 information that they considered or wished to have
4 protected. I have not reviewed them, so I don't
5 consider your nominated pieces of information to be
6 information that will in fact be protected. That's
7 yet to come.

8 Let me just take Thursday's transcript and
9 put it with the other material that you submitted
10 under seal and talk about that. I have to say that
11 none of the items that I read which has to do with the
12 written submissions, and I'm only talking about the
13 written submissions of the parties with respect to the
14 motion.

15 None of that had any highlighted
16 information, and I don't know whether that is an
17 oversight or reflects the fact that there wasn't
18 anything sensitive in those submissions, but I think
19 that I'm wrong about that because I did take a glance
20 at at least APL's redacted version, and there was an
21 awful lot of black in it so I guess what I read didn't
22 reflect highlighted editions.

23 I think what I want to ask you all to do is
24 to, and I'm sorry to do this again, but I think I'd
25 like to have you submit a considered edition of your

1 papers, having discussed it between the parties as to
2 the other parties' sensitive information, and submit
3 to me the kinds of information or submit to me another
4 edition with it highlighted.

5 I really would like along with it a
6 memorandum, and nothing necessarily elaborate,
7 identifying the reasons why a particular kind of
8 information needs to be protected. I think, Mr.
9 Gordon, for example, with respect to the sorting you
10 consider that to be an operational trade secret, and I
11 think that's all you have to designate with respect to
12 that, so any time I see any description of sorting I
13 will understand it and evaluate it on that basis.

14 If it has to do with bid price and you
15 believe that that bid price is protected information,
16 I think I would recognize that kind of information.
17 The legal status of the bid price and its components
18 is a little uncertain in my mind because I think that
19 the winning bidder's ultimate price is not protected.

20 Whether an unsuccessful bidder's price is
21 not protected is I think a separate question, so the
22 fact that we know what the interim price was and final
23 price was, that I think is a different kind of
24 question. If you wanted to take that, I think I'd
25 like a little explanation. It doesn't necessarily

1 have to be more than a paragraph, --

2 MR. DAVIS: Thank you, Your Honor.

3 THE COURT: -- you know, establishing why
4 that is the case so we have the prices.

5 I don't know whether the technical raw
6 numbers of 995 and 930 tells anybody anything, so I
7 don't think I would include that as a category of
8 protected information.

9 While I don't think it is necessary or
10 worthwhile to go through every page and every item in
11 the administrative record, if you can designate, if
12 you will, by volume those portions of the
13 administrative record that don't contain any kind of
14 protected information then at least we could do that,
15 but I don't think a page and paragraph review of the
16 administrative record is worth anybody's time.

17 MR. WILLIAMSON: Your Honor, the government
18 is at a bit of a loss, I think, to take a considered
19 view of what APL or New Breed might designate to be --

20 THE COURT: I understand, but they'll let
21 you know.

22 MR. WILLIAMSON: All right.

23 THE COURT: And you will circulate these
24 things amongst all of you before you send it in. If
25 anybody objects to somebody else's designation, you

1 obviously can reflect that, too. They'll let you know
2 what they consider --

3 MR. WILLIAMSON: Okay. At the risk of being
4 accused of trying to dodge work, I just wanted --

5 THE COURT: Well, the government has nothing
6 of its own information --

7 MR. WILLIAMSON: That's correct.

8 THE COURT: -- it wants to protect, so it
9 will only be derivative of the other parties.

10 MR. WILLIAMSON: Yes.

11 THE COURT: They'll let you know, and if you
12 want to take issue with something --

13 MR. WILLIAMSON: Okay.

14 THE COURT: -- you certainly may take issue
15 with what another party wants to keep confidential, as
16 any party may.

17 MR. WILLIAMSON: Okay. So they'll let us
18 know about the government's brief what should be?

19 THE COURT: Yes.

20 MR. WILLIAMSON: All right. Okay. That's
21 fine.

22 THE COURT: I would like to know from the
23 award recommendation, which I think is a critical
24 piece of information. I would like to have that as
25 unedited as possible, but obviously do review that.

1 As I say, you can conveniently segregate portions of
2 the administrative record as protected and not
3 protected without a line by line review. That's
4 certainly fine, too.

5 I will issue within a day or two a written
6 confirmation of this ruling, but this is the ruling of
7 the Court. Knowing that we're talking about prices
8 and specifics of prices as one category of protected
9 information and the sorting question as another,
10 there's nothing in what I propose to issue in written
11 form that I think would transgress the parties' desire
12 to keep the information confidential.

13 Is there anything else that I ought to be
14 alert to?

15 MR. GORDON: I was thinking about the lease
16 pricing. I'll have to talk to my client about some of
17 these things obviously.

18 THE COURT: Yes.

19 MR. GORDON: There are a lot of things that
20 people claim protection to in their proposals that is
21 not ordinarily disclosed by a bidder.

22 THE COURT: Yes. I would think that if it
23 came to that it would only be the \$4 million proposed
24 discrepancy rather than the underlying base numbers.

25 MR. GORDON: I'll have to think about that.

1 THE COURT: Okay.

2 MR. GORDON: I understand what you're
3 saying, but any range of information is competitive
4 information to competitors that they might not
5 otherwise have access to, and I just want to run it by
6 my client to see if --

7 THE COURT: Okay. Well, Richie has a pretty
8 good idea since they got the same kind of estimate,
9 didn't they?

10 MR. GORDON: But they don't know what we
11 had. I mean, competitors are not --

12 THE COURT: I understand. If it turns out
13 indeed to be different, I'm not sure that a \$4 million
14 ball park --

15 MR. GORDON: Right.

16 THE COURT: -- is going to tell them
17 anything.

18 MR. GORDON: Right, but New Breed doesn't
19 know, for example, and there are other competitors
20 that don't know.

21 THE COURT: All right. Anyway, let me know
22 whether the \$4 million margin is something. I need to
23 let Mr. Baker know informally if you intend to claim
24 it.

25 MR. GORDON: Okay. I'll let you know. I'll

1 call them today.

2 THE COURT: Okay.

3 MR. HARRINGTON: Your Honor?

4 THE COURT: Yes?

5 MR. HARRINGTON: May I ask one
6 clarification?

7 THE COURT: Certainly.

8 MR. HARRINGTON: The administrative record
9 does include the technical proposals and the cost
10 proposals. Were you thinking of releasing those?

11 THE COURT: No. No. That's what I would
12 expect to have as the core of the trade secret and
13 other kinds of information, so that's not what I would
14 expect to be on the public side.

15 It may not be possible to review the
16 administrative record and make a simple dichotomy
17 between the two versions, or it may be so little that
18 would be made public that it would not help anybody at
19 all.

20 MR. WILLIAMSON: The proposals are for the
21 most part sort of in the same location in the record,
22 I think.

23 THE COURT: Right. Right. The analysis,
24 however, would then --

25 MR. WILLIAMSON: Yes.

1 THE COURT: -- be elsewhere. It may be that
2 there's nothing conveniently that could be made
3 public.

4 I've had bid protest cases in which it just
5 was totally impractical to edit the administrative
6 record. I don't believe in terms of the public a lot
7 more is required to understand the nature of this case
8 and the Court's ruling and its place in the spectrum
9 of bid protest beyond the parties' submission and the
10 Court ruling in the oral argument.

11 Okay. Is there anything else we need to
12 address, Mr. Davis?

13 MR. DAVIS: No, Your Honor, but since you've
14 given me the opportunity I just wanted to thank the
15 Court for its thorough consideration of the issues as
16 evidenced by the oral argument that we had last week
17 and your ruling. I appreciate your consideration of
18 these matters.

19 THE COURT: Yes, sir.

20 MR. GORDON: We feel the same way.

21 MR. WILLIAMSON: Ditto, Your Honor.

22 THE COURT: Okay. Well, thank you very
23 much.

24 All right. Do I see Mr. Williamson again
25 soon with another one?

1 MR. WILLIAMSON: Yes, Your Honor. You'll be
2 getting our opening brief tomorrow.

3 THE COURT: All right. I will say
4 parenthetically that one of my colleagues came up,
5 having seen the calendar for today and having seen New
6 Breed and the law firm on it, wondering what was going
7 on because she also has a New Breed, which I think
8 your firm represents.

9 MR. DAVIS: That is correct, Your Honor.

10 THE COURT: I assured her it was not the
11 same case.

12 MR. DAVIS: That's right.

13 THE COURT: I assume it's not the same case?

14 MR. DAVIS: No, it's not.

15 THE COURT: Very good. Mr. Baker, anything
16 else?

17 MR. BAKER: No.

18 THE COURT: Okay. Thank you again,
19 everybody. We are adjourned.

20 ALL: Thank you, Your Honor.

21 (Whereupon, at 2:12 p.m. the hearing in the
22 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: 03-115C
CASE TITLE: New Breed Leasing v. U.S.
HEARING DATE: March 31, 2003
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Court of Federal Claims.

Date: March 31, 2003



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